



**OFFICE OF
INSURANCE COMMISSIONER**

August 25, 2004

**STATE OF WASHINGTON NOTICE TO PROPERTY AND CASUALTY COMPANIES
FOR:**

- 1. ALL PROPERTY AND CASUALTY INSURERS WRITING
COMMERCIAL LINES INSURANCE PRODUCTS**
- 2. ALL INSURERS ON THE NAIC QUARTERLY LISTING OF ALIEN
INSURERS**

**RE: UNCERTAINTY RELATED TO EXPIRATION OF THE TERRORISM RISK
INSURANCE ACT OF 2002 EXCLUSIONS RELATED TO ACTS OF TERRORISM**

Background

The Terrorism Risk Insurance Act of 2002 (TRIA) was adopted by Congress to provide a temporary federal shared loss program for incurred losses resulting from certain acts of terrorism to protect American businesses by minimizing market disruptions and ensuring the widespread availability and affordability of property and casualty insurance for terrorism risk. Recently there has been uncertainty in the markets for commercial lines property and casualty insurance coverage because of the pending expiration of TRIA. While TRIA's Dec. 31, 2005 expiration date appears to be in the distant future, insurers will be called upon to make decisions about commercial insurance coverage later this year.

The commercial insurance business cycle operates in such a way that insurers and their policyholders will be required to make decisions as early as this September that will affect coverage well into 2006. Annual policy renewals with effective dates of Jan. 1, 2005 or later will have to contemplate no federal backstop for any losses in 2006. For this reason, regulators expect that insurers and advisory organizations will file conditional exclusions for terrorism coverage and will attach them to renewal policies on a widespread basis.

This places insurers, businesses and regulators in the same situation we encountered in the aftermath of Sept. 11th and which in large part prompted TRIA's enactment. Once again, insurance regulators find themselves having to consider approval of certain coverage limitations for acts of terrorism or risk possible serious solvency concerns in the insurance industry.

The intent of this notice is to inform you of the decision in this state to approve certain conditional coverage limitations for acts of terrorism, to put insurers on notice that determination of certain contractual thresholds is subject to disclosure and review by this office and to provide a voluntary procedure for insurers to use to expedite the filing and timely review of these limited exclusions. As Commissioner I was involved in recent discussions at the National Association of Insurance Commissioners (NAIC) related to this issue. In a recent conference call the members

of the NAIC agreed that the conditional endorsement approach, while not providing a perfect solution, offers the best hope for adding some certainty to address TRIA's hard ending should Congress fail to enact an extension of TRIA. By this notice, I am informing you of my intent to act in a manner consistent with the recommendation from the NAIC membership. I believe this to be the best course of action as it balances the need of insurers to have some certainty related to solvency concerns with the business consumer's concerns that their businesses not be subject to uninsured events.

Instead of approving the very broad total exclusions of coverage for acts of terrorism, this state intends to grant approval to conditional coverage limitations that are substantially similar to those describe in the following pages.

Acceptable Coverage Limitations

The coverage limitations that will be approved by this state have some significant limitations; however, they continue to provide coverage for acts of terrorism under certain circumstances. For policies providing property insurance coverage the following limitations apply:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period;
- Exclusions for acts of terrorism are not subject to limitations above if:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

For policies providing liability insurance coverage the following limitations apply:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period; or
- Fifty or more persons sustain death or serious physical injury. For purposes of this provision serious physical injury means:
 - Physical injury that involves a substantial risk of death;
 - Protracted and obvious physical disfigurement; or
 - Protracted loss of or impairment of the function of a bodily member or organ.
- Exclusions for acts of terrorism are not subject to limitations above if:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

This state will accept the following definition of acts of terrorism or definitions that are more liberal to policyholders:

Terrorism means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or
 - b. Commission or threat of a dangerous act; or
 - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
 - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or to express opposition to) a philosophy or ideology.

Required Coverage Provisions

- Washington is a Standard Fire Policy state. The requirements for fire coverage are established in Chapter 284-20 WAC and must meet or exceed the provisions of the Standard Fire Policy. These legal requirements cannot be waived, and are not preempted by the Act. Thus, a business cannot voluntarily waive this mandated coverage.
- Washington is a state where “concurrent causation” exclusions are not permitted. If you cover the “efficient proximate cause” of the loss, you cannot exclude coverage for later events, even if they are the “causes-in-fact” of the loss. Form must be drafted or amended in a manner consistent to ISO form IL0983 05 04.

Submission of Rates, Rules and Policy Form Language

This state will allow insurers and advisory organizations to submit and receive approval for conditional endorsements. These conditional endorsements would only apply if Congress fails to enact an extension to TRIA or enacts changes to TRIA that substantially change the risk of loss that an insurer or policyholder has assumed

Rate, rule and form filings will need to be submitted for commercial lines products (unless excepted from the Act, e.g. crop, livestock, medical malpractice) by all admitted carriers. Surplus lines are not subject to rate, rule and form filing requirements.

Washington is a “use and file” state for commercial lines rates, rules and forms with the exception of surety¹. This means that new rates, rules and forms subject to the Act can be issued before they are submitted as a filing. Filings must be received at the Office of the Insurance Commissioner (OIC) within 30 days of the effective date of the first policy that includes such rate, rule or form. The filings remain subject to review under current applicable state law and must be corrected if disapproved. Where rates, rules, or forms are filed on behalf of an insurer by a rating organization or advisory organization, the insurer may need to file only for deviations or if not adopting the filing. Independent programs will require specific filings by each insurer.

The NAIC has provided to the States optional expedited filing and certification processes. Due to the existence of “use and file” filing laws, these processes and the EXPEDITED TRANSMITTAL DOCUMENT are not applicable in the State of Washington. Filings should be submitted in the normal way with the exception of inserting the key word “TERRORISM” in the filing description area of the transmittal form. This word will help identify filings for OIC internal priority procedures. See the OIC webpage for filing procedures and forms at: <http://www.insurance.wa.gov/industry/mainpropertycasualty.asp>

Effective Date

This notice shall take immediate effect and shall expire on Dec. 31, 2005, unless Congress acts to extend or modify TRIA.

¹ Surety rates and rules are prior approval, which means the rates and rules must be approved before they are used. Surety forms are not subject to filing requirements.